

LEGISLATIVE RESEARCH COMMISSION
CRIMINAL RECORD EXPUNCTIONS
COMMITTEE
NORTH CAROLINA GENERAL ASSEMBLY



REPORT TO THE
2012 SESSION
of the
2011 GENERAL ASSEMBLY
OF NORTH CAROLINA

APRIL, 2012

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TRANSMITTAL LETTER

May 16, 2012

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TO THE MEMBERS OF THE 2012 REGULAR SESSION
OF THE 2011 GENERAL ASSEMBLY

The Legislative Research Commission herewith submits to you for your consideration its report and recommendations to the 2012 Regular Session of the 2011 General Assembly. The report was prepared by the Legislative Research Commission's Committee on Criminal Record Expunctions, pursuant to G.S. 120-30.70(1).

Respectfully submitted,



Senator Philip E. Berger
President Pro Tempore of the Senate



Representative Thomas R. Tillis
Speaker of the House of Representatives

Co-Chairs
Legislative Research Commission

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LEGISLATIVE RESEARCH COMMISSION MEMBERSHIP

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2011 – 2012

President Pro Tempore of the Senate

Senator Philip E. Berger
Co-Chair

Senator Thomas M. Apodaca
Acting Co-Chair

Senator Peter S. Brunstetter
Senator Linda D. Garrou
Senator Martin L. Nesbitt, Jr.
Senator Richard Y. Stevens

Speaker of the House of Representatives

Representative Thomas R. Tillis
Co-Chair

Representative Timothy K. Moore
Acting Co-Chair

Representative John M. Blust
Representative Justin P. Burr
Representative Mike D. Hager
Representative Edith D. Warren

PREFACE

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The Legislative Research Commission, established by Article 6B of Chapter 120 of the General Statutes, is the general purpose study group in the Legislative Branch of State Government. The Commission is co-chaired by the President Pro Tempore of the Senate and the Speaker of the House of Representatives and has five additional members appointed from each house of the General Assembly. Among the Commission's duties is that of making or causing to be made, upon the direction of the General Assembly, "such studies of and investigation into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner" (G.S. 120-30.17(1)).

The Legislative Research Commission authorized the study of Criminal Record Expunctions, under authority of G.S. 120-30.17(1). The Committee was chaired by Representative N. Leo Daughtry. The full membership of the Committee is listed under [Committee Membership](#). A committee notebook containing the committee minutes and all information presented to the committee will be filed in the Legislative Library by the end of the **2011-2012** biennium.

COMMITTEE PROCEEDINGS

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The Legislative Research Commission's Committee on Criminal Record Expunctions met two times after the 2011 Regular Session. The Committee's Charge can be found [here](#). The following is a brief summary of the Committee's proceedings. Detailed minutes and information from each Committee meeting are available in the Legislative Library.

November 17, 2011 Meeting

The initial meeting of the LRC Committee on Criminal Record Expunctions began with a review of the Committee's charge and the adoption of an operating budget for the Committee. Committee staff provided an overview of North Carolina laws pertaining to the expunction of criminal records. (See Appendix E)

Committee members engaged in an open discussion of issues and concerns for consideration during the course of the Committee's deliberations. The Committee provided interested parties an opportunity to be heard on the issue.

April 18, 2012

The Committee met to finalize and adopt its final report containing its findings and recommendations to the Legislative Research Commission.

FINDINGS AND RECOMMENDATIONS

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Findings

The Committee makes the following findings regarding the expunction of criminal records:

1. In general, expunction is allowed in limited circumstances to remove information about a charge or conviction of a criminal offense from the records of certain classes of people. Once the record is expunged, any information related to the offense is permanently deleted from the record and the individual may deny the incident ever occurred.
2. In North Carolina, individuals who are eligible for expunction include:
 - Those who had charges brought against them, but those charges were ultimately dismissed or the person was found not guilty.
 - Those who received a pardon of innocence from the Governor of North Carolina.
 - Those who were the victim of identity theft (i.e. the person arrested for the crime provided another person's name and information to the police instead of their own).
 - Those 18 years of age or older wishing to expunge juvenile records of minor offenses.
 - First-time offenders 21 years old or younger charged with a minor alcohol offense or drug possession crime.
3. Information about a person's criminal record can be accessed by potential employers, landlords and others running criminal background checks. Consequently, many people are increasingly aware of the effect a criminal conviction can have on their lives and how it can impact everything from their ability to get a job or rent an apartment, to their ability to gain credit or to retain a professional license.
4. Expunction is a process that can and should be used to give people who have committed minor crimes a clean slate and a fresh start, especially when a significant amount of time has passed without further trouble.

Recommendation

The Committee recommends that the General Assembly enact Legislative Proposal I:

AN ACT TO PROVIDE FOR EXPUNCTION OF NONVIOLENT FELONIES OR NONVIOLENT MISDEMEANORS AFTER 15 YEARS FOR PERSONS WHO HAVE HAD NO OTHER CONVICTIONS FOR FELONIES OR MISDEMEANORS OTHER THAN TRAFFIC VIOLATIONS UNDER THE LAWS OF THE UNITED STATES, THIS STATE, OR ANY OTHER JURISDICTION.

COMMITTEE MEMBERSHIP

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2011-2012

Speaker of the House of Representatives Appointments:

Representative N. Leo Daughtry, Chair

Representative John Blust

Representative Richard Glazier

Representative Timothy Moore

Representative Shirley Randleman

Representative Timothy Spear

Representative Sarah Stevens

COMMITTEE CHARGE

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The Legislative Research Commission's Committee on Criminal Record Expunctions may study whether current law strikes an appropriate balance between an employer's need for access to accurate criminal history information about potential employees and the need for a person who committed a relatively minor offense in the distant past to obtain employment in spite of the person's criminal history. If the Committee finds that it may be possible to achieve a better balance between these interests, then the Committee may further consider what type of expunction procedure may be developed and implemented that addresses the interests and concerns of employers, but also affords some appropriate relief to persons with a relatively minor past criminal conviction. In its study, the Committee may consider all of the following:

- (1) The effect of a person's criminal record with regard to a person's ability to obtain employment.
- (2) The reasons that an employer may need to know about a potential employee's criminal record.
- (3) What types of criminal records may or may not be relevant with regard to certain types of employment.
- (4) What criminal offenses, if any, it may be reasonable to allow to be expunged from a person's record, the time period or other criteria that should be used to determine whether it is appropriate to allow the expunction, and whether the offense should be completely erased from the criminal record so that the person has no criminal record, or retained but limit the accessibility of the record only for certain purposes.
- (5) Any other issues the Committee considers relevant to this topic.

Authority: LRC 2011 HJR 760

STATUTORY AUTHORITY

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NORTH CAROLINA GENERAL STATUTES ARTICLE 6B.

Legislative Research Commission.

§ 120-30.17. Powers and duties.

The Legislative Research Commission has the following powers and duties:

- (1) Pursuant to the direction of the General Assembly or either house thereof, or of the chairmen, to make or cause to be made such studies of and investigations into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner.
- (2) To report to the General Assembly the results of the studies made. The reports may be accompanied by the recommendations of the Commission and bills suggested to effectuate the recommendations.
- (3), (4) Repealed by Session Laws 1969, c. 1184, s. 8.
- (5), (6) Repealed by Session Laws 1981, c. 688, s. 2.
- (7) To obtain information and data from all State officers, agents, agencies and departments, while in discharge of its duty, pursuant to the provisions of G.S. 120-19 as if it were a committee of the General Assembly.
- (8) To call witnesses and compel testimony relevant to any matter properly before the Commission or any of its committees. The provisions of G.S. 120-19.1 through G.S. 120-19.4 shall apply to the proceedings of the Commission and its committees as if each were a joint committee of the General Assembly. In addition to the other signatures required for the issuance of a subpoena under this subsection, the subpoena shall also be signed by the members of the Commission or of its committee who vote for the issuance of the subpoena.
- (9) For studies authorized to be made by the Legislative Research Commission, to request another State agency, board, commission or committee to conduct the study if the Legislative Research Commission determines that the other body is a more appropriate vehicle with which to conduct the study. If the other body agrees, and no legislation specifically provides otherwise, that body shall conduct the study as if the original authorization had assigned the study to that body and shall report to the General Assembly at the same time other studies to be conducted by the Legislative Research Commission are to be reported. The other agency shall conduct the transferred study within the funds already assigned to it.

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LEGISLATIVE PROPOSAL I

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A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR EXPUNCTION OF NONVIOLENT FELONIES OR NONVIOLENT MISDEMEANORS AFTER 15 YEARS FOR PERSONS WHO HAVE HAD NO OTHER CONVICTIONS FOR FELONIES OR MISDEMEANORS OTHER THAN TRAFFIC VIOLATIONS UNDER THE LAWS OF THE UNITED STATES, THIS STATE, OR ANY OTHER JURISDICTION.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 15A of the General Statutes is amended to add a new section to read:

§ 15A-145.5. Expunction of certain misdemeanors and felonies; no age limitation.

(a) For purposes of this section, the term "nonviolent misdemeanor" or "nonviolent felony" means any misdemeanor or felony except the following:

- (1) A Class A through G felony or a Class A1 misdemeanor.
- (2) An offense that includes assault as an essential element of the offense.
- (3) An offense requiring registration pursuant to Article 27A of Chapter 14 of the General Statutes, whether or not the person is currently required to register.
- (4) Any of the following sex-related or stalking offenses: G.S. 14-27.7A(b), 14-190.7, 14-190.8, 14-190.9, 14-202, 14-208.11A, 14-208.18, 14-277.3, 14-277.3A, 14-321.1.
- (5) Any felony offense in Chapter 90 of the General Statutes where the offense involves methamphetamines, heroin, or possession with intent to sell or deliver or sell and deliver cocaine.
- (6) An offense under G.S. 14-12.12(b), 14-12.13, or 14-12.14, or any offense for which punishment was determined pursuant to G.S. 14-3(c).
- (7) An offense under G.S. 14-401.16.
- (8) Any felony offense in which a commercial motor vehicle was used in the commission of the offense.

(b) Notwithstanding any other provision of law, if the person is convicted of more than one nonviolent felony or nonviolent misdemeanor in the same session of court and none of the nonviolent felonies or nonviolent misdemeanors are alleged to have occurred after the person had already been served with criminal process for the commission of a nonviolent felony or nonviolent misdemeanor, then the multiple nonviolent felony or misdemeanor convictions shall be treated as one nonviolent felony or misdemeanor conviction under this section, and the expunction order issued under this section shall provide that the multiple nonviolent felony convictions or misdemeanor convictions shall be expunged from the person's record in accordance with this section.

1 (c) A person may file a petition in the court where the person was convicted for
2 expunction of a nonviolent misdemeanor or nonviolent felony conviction from the
3 person's criminal record if the person has no other misdemeanor or felony convictions,
4 other than a traffic violation, and was convicted of a nonviolent misdemeanor or
5 nonviolent felony that is eligible pursuant to subsection (b) of this section. The petition
6 shall not be filed earlier than 15 years after the date of the conviction or when any active
7 sentence, period of probation, and post-release supervision has been served, whichever
8 occurs later. The petition shall contain, but not be limited to, the following:

9 (1) An affidavit by the petitioner that the petitioner has been of good
10 behavior since the completion of any sentence received for the
11 nonviolent misdemeanor or nonviolent felony, and has not been
12 convicted of any other felony or misdemeanor other than a traffic
13 violation under the laws of the United States or the laws of this State
14 or any other state.

15 (2) Verified affidavits of two persons who are not related to the petitioner
16 or to each other by blood or marriage, that they know the character and
17 reputation of the petitioner in the community in which the petitioner
18 lives and that the petitioner's character and reputation are good.

19 (3) A statement that the petition is a motion in the cause in the case
20 wherein the petitioner was convicted.

21 (4) An application on a form approved by the Administrative Office of the
22 Courts requesting and authorizing a name-based State and national
23 criminal record check by the Department of Justice using any
24 information required by the Administrative Office of the Courts to
25 identify the individual and a search of the confidential record of
26 expunctions maintained by the Administrative Office of the Courts.
27 The application shall be forwarded to the Department of Justice and to
28 the Administrative Office of the Courts, which shall conduct the
29 searches and report their findings to the court.

30 (5) An affidavit by the petitioner that no restitution orders or civil
31 judgments representing amounts ordered for restitution entered against
32 the petitioner are outstanding.

33 Upon filing of the petition, the petition shall be served upon the district attorney of
34 the court wherein the case was tried resulting in conviction. The district attorney shall
35 have 30 days thereafter in which to file any objection thereto and shall be duly notified as
36 to the date of the hearing of the petition. Upon good cause shown, the court may grant the
37 district attorney an additional 30 days to file objection to the petition.

38 The presiding judge is authorized to call upon a probation officer for any additional
39 investigation or verification of the petitioner's conduct since the completion of any
40 sentence received for the nonviolent misdemeanor or nonviolent felony.

41 If the court, after hearing, finds that the petitioner has not been previously granted an
42 expunction under this section, G.S. 15A-145, 15A-145.1, 15A-145.2, 15A-145.3, or 15A-
43 145.4, the petitioner has no other felony or misdemeanor convictions, other than a traffic
44 violation, the petitioner has no outstanding restitution orders or civil judgments
45 representing amounts ordered for restitution entered against the petitioner, and the
46 petitioner was convicted of an offense eligible for expunction under this section and was

1 convicted of, and completed any sentence received for, the nonviolent misdemeanor or
2 nonviolent felony at least 15 years prior to the filing of the petition, it shall order that
3 such person be restored, in the contemplation of the law, to the status the person occupied
4 before such arrest or indictment or information.

5 (d) No person as to whom an order has been entered pursuant to subsection
6 (c) of this section shall be held thereafter under any provision of any laws to be
7 guilty of perjury or otherwise giving a false statement by reason of that person's
8 failure to recite or acknowledge the arrest, indictment, information, trial, or
9 conviction. Persons pursuing certification under the provisions of Chapter 17C or
10 17E of the General Statutes, however, shall disclose any and all convictions to the
11 certifying Commission regardless of whether or not the convictions were
12 expunged pursuant to the provisions of this section.

13 Persons required by State law to obtain a criminal history record check on a
14 prospective employee shall not be deemed to have knowledge of any convictions
15 expunged under this section.

16 (e) The court shall also order that the conviction be expunged from the
17 records of the court and direct all law enforcement agencies bearing record of the
18 same to expunge their records of the conviction. The clerk shall notify State and
19 local agencies of the court's order as provided in G.S. 15A-150.

20 (f) Any other applicable State or local government agency shall expunge
21 from its records entries made as a result of the conviction ordered expunged under
22 this section. The agency shall also reverse any administrative actions taken against
23 a person whose record is expunged under this section as a result of the charges or
24 convictions expunged. This subsection shall not apply to the Department of Justice
25 for DNA records and samples stored in the State DNA Database and the State
26 DNA Databank.

27 (g) A person who files a petition for expunction of a criminal record under
28 this section must pay the clerk of superior court a fee of one hundred seventy-five
29 dollars (\$175.00) at the time the petition is filed. Fees collected under this
30 subsection shall be deposited in the General Fund. This subsection does not apply
31 to petitions filed by an indigent."

32 **SECTION 2.** G.S. 15A-145.4 reads as rewritten:

33 **"§ 15A-145.4. Expunction of records for first offenders who are under 18**
34 **years of age at the time of the commission of a nonviolent felony.**

35 (a) For purposes of this section, the term "nonviolent felony" means any
36 felony except the following:

- 37 (1) A Class A through G felony.
38 (2) A felony that includes assault as an essential element of the
39 offense.
40 (3) A felony that is an offense ~~for which the convicted offender must~~
41 ~~register under~~ requiring registration pursuant to Article 27A of
42 Chapter 14 of the General Statutes-Statutes, whether or not the
43 person is currently required to register.

1 ~~(4)~~ A felony that is an offense that did not require registration under
2 Article 27A of Chapter 14 of the General Statutes at the time of
3 the commission of the offense but does require registration on the
4 date the petition to expunge the offense would be filed.

5 ~~(5)~~(4) A felony charged for any of Any felony offense under the
6 following sex-related or stalking offenses: G.S. 14-27.7A(b),
7 14-190.6, 14-190.7, 14-190.8, 14-202, 14-208.11A, 14-208.18,
8 14-277.3, 14-277.3A, 14-321.1.

9 ~~(6)~~(5) Any felony offense charged pursuant to in Chapter 90 of the
10 General Statutes where the offense involves methamphetamines,
11 heroin, or possession with intent to sell or deliver or sell and
12 deliver cocaine.

13 ~~(7)~~(6) A felony offense charged pursuant to under G.S. 14-12.12(b),
14 14-12.13, or 14-12.14, or any felony offense charged as a
15 felony for which punishment was determined pursuant to G.S.
16 14-3(c).

17 ~~(8)~~(7) A felony offense charged pursuant to under G.S. 14-401.16.

18 ~~(9)~~(8) A Any felony offense in which a commercial motor vehicle was
19 used in the commission of the offense.

20 (b) Notwithstanding any other provision of law, if the person is convicted
21 of more than one nonviolent felony in the same session of court and none of the
22 nonviolent felonies are alleged to have occurred after the person had already been
23 ~~charged and arrested~~served with criminal process for the commission of a
24 nonviolent felony, then the multiple nonviolent felony convictions shall be treated
25 as one nonviolent felony conviction under this section, and the expunction order
26 issued under this section shall provide that the multiple nonviolent felony
27 convictions shall be expunged from the person's record in accordance with this
28 section.

29 (c) Whenever any person who had not yet attained the age of 18 years at the
30 time of the commission of the offense and has not previously been convicted of
31 any felony or misdemeanor other than a traffic violation under the laws of the
32 United States or the laws of this State or any other state pleads guilty to or is guilty
33 of a nonviolent felony, the person may file a petition in the court where the person
34 was convicted for expunction of the nonviolent felony from the person's criminal
35 record. The petition shall not be filed earlier than four years after the date of the
36 conviction or when any active sentence, period of probation, and post-release
37 supervision has been served, whichever occurs later. The person shall also perform
38 at least 100 hours of community service, preferably related to the conviction,
39 before filing a petition for expunction under this section. The petition shall contain
40 the following:

41 (1) An affidavit by the petitioner that the petitioner has been of good
42 moral character since the date of conviction of the nonviolent
43 felony in question and has not been convicted of any other felony

1 or any misdemeanor other than a traffic violation under the laws
2 of the United States or the laws of this State or any other state.

3 (2) Verified affidavits of two persons who are not related to the
4 petitioner or to each other by blood or marriage, that they know
5 the character and reputation of the petitioner in the community in
6 which the petitioner lives and that the petitioner's character and
7 reputation are good.

8 (3) A statement that the petition is a motion in the cause in the case
9 wherein the petitioner was convicted.

10 (4) An application on a form approved by the Administrative Office
11 of the Courts requesting and authorizing (i) a State and national
12 criminal history record check by the Department of Justice using
13 any information required by the Administrative Office of the
14 Courts to identify the individual; (ii) a search by the Department
15 of Justice for any outstanding warrants or pending criminal cases;
16 and (iii) a search of the confidential record of expunctions
17 maintained by the Administrative Office of the Courts. The
18 application shall be forwarded to the Department of Justice and
19 to the Administrative Office of the Courts, which shall conduct
20 the searches and report their findings to the court.

21 (5) An affidavit by the petitioner that no restitution orders or civil
22 judgments representing amounts ordered for restitution entered
23 against the petitioner are outstanding.

24 (6) An affidavit by the petitioner that the petitioner has performed at
25 least 100 hours of community service since the conviction for the
26 nonviolent felony. The affidavit shall include a list of the
27 community services performed, a list of the recipients of the
28 services, and a detailed description of those services.

29 (7) An affidavit by the petitioner that the petitioner possesses a high
30 school diploma, a high school graduation equivalency certificate,
31 or a General Education Development degree.

32 The petition shall be served upon the district attorney of the court wherein the
33 case was tried resulting in conviction. The district attorney shall have 30 days
34 thereafter in which to file any objection thereto and shall be duly notified as to the
35 date of the hearing of the petition. The district attorney shall make his or her best
36 efforts to contact the victim, if any, to notify the victim of the request for
37 expunction prior to the date of the hearing.

38 (d) The court in which the petition was filed shall take the following steps
39 and shall consider the following issues in rendering a decision upon a petition for
40 expunction of records of a nonviolent felony under this section:

41 (1) Call upon a probation officer for additional investigation or
42 verification of the petitioner's conduct during the four-year

- 1 period since the date of conviction of the nonviolent felony in
2 question.
- 3 (2) Review the petitioner's juvenile record, ensuring that the
4 petitioner's juvenile records remain separate from adult records
5 and files and are withheld from public inspection as provided
6 under Article 30 of Chapter 7B of the General Statutes.
- 7 (3) Review the amount of restitution made by the petitioner to the
8 victim of the nonviolent felony to be expunged and give
9 consideration to whether or not restitution was paid in full.
- 10 (4) Review any other information the court deems relevant,
11 including, but not limited to, affidavits or other testimony
12 provided by law enforcement officers, district attorneys, and
13 victims of nonviolent felonies committed by the petitioner.
- 14 (e) The court may order that the person be restored, in the contemplation of
15 the law, to the status the person occupied before the arrest or indictment or
16 information if the court finds all of the following after a hearing:
- 17 (1) The petitioner has remained of good moral character and has
18 been free of conviction of any felony or misdemeanor, other than
19 a traffic violation, for four years from the date of conviction of
20 the nonviolent felony in question or any active sentence, period
21 of probation, or post-release supervision has been served,
22 whichever is later.
- 23 (2) The petitioner has not previously been convicted of any felony or
24 misdemeanor other than a traffic violation under the laws of the
25 United States or the laws of this State or any other state.
- 26 (3) The petitioner has no outstanding warrants or pending criminal
27 cases.
- 28 (4) The petitioner has no outstanding restitution orders or civil
29 judgments representing amounts ordered for restitution entered
30 against the petitioner.
- 31 (5) The petitioner was less than 18 years old at the time of the
32 commission of the offense in question.
- 33 (6) The petitioner has performed at least 100 hours of community
34 service since the time of the conviction and possesses a high
35 school diploma, a high school graduation equivalency certificate,
36 or a General Education Development degree.
- 37 (7) The search of the confidential records of expunctions conducted
38 by the Administrative Office of the Courts shows that the
39 petitioner has not been previously granted an expunction.
- 40 (f) No person as to whom an order has been entered pursuant to subsection
41 (e) of this section shall be held thereafter under any provision of any laws to be
42 guilty of perjury or otherwise giving a false statement by reason of that person's
43 failure to recite or acknowledge the arrest, indictment, information, trial, or

1 conviction. Persons pursuing certification under the provisions of Chapter 17C or
2 17E of the General Statutes, however, shall disclose any and all felony convictions
3 to the certifying Commission regardless of whether or not the felony convictions
4 were expunged pursuant to the provisions of this section.

5 Persons required by State law to obtain a criminal history record check on a
6 prospective employee shall not be deemed to have knowledge of any convictions
7 expunged under this section.

8 (g) The court shall also order that the nonviolent felony conviction be
9 expunged from the records of the court and direct all law enforcement agencies
10 bearing record of the same to expunge their records of the conviction. The clerk
11 shall notify State and local agencies of the court's order as provided in G.S.
12 15A-150.

13 (h) Any other applicable State or local government agency shall expunge
14 from its records entries made as a result of the conviction ordered expunged under
15 this section. The agency shall also reverse any administrative actions taken against
16 a person whose record is expunged under this section as a result of the charges or
17 convictions expunged. This subsection shall not apply to the Department of Justice
18 for DNA records and samples stored in the State DNA Database and the State
19 DNA Databank.

20 (i) Any person eligible for expunction of a criminal record under this
21 section shall be notified about the provisions of this section by the probation
22 officer assigned to that person. If no probation officer is assigned, notification of
23 the provisions of this section shall be provided by the court at the time of the
24 conviction of the felony which is to be expunged under this section."

25 | **SECTION 3.** G.S. 15A-145(d1) is repealed.

26 | **SECTION 4.** G.S. 15A-146 reads as rewritten:

27 | **"§ 15A-146. Expunction of records when charges are dismissed or there are**
28 | **findings of not guilty.**

29 | (a) If any person is charged with a crime, either a misdemeanor or a felony,
30 | or was charged with an infraction under G.S. 18B-302(i) prior to December 1,
31 | 1999, and the charge is dismissed, or a finding of not guilty or not responsible is
32 | entered, that person may apply to the court of the county where the charge was
33 | brought for an order to expunge from all official records any entries relating to his
34 | apprehension or trial. The court shall hold a hearing on the application and, upon
35 | finding that the person had not previously received an expungement under this
36 | section, G.S. 15A-145, G.S. 15A-145.1, 15A-145.2, or ~~15A-145.3, 15A-145.3,~~
37 | 15A-145.4, or 15A-145.5, and that the person had not previously been convicted
38 | of any felony under the laws of the United States, this State, or any other state, the
39 | court shall order the expunction. No person as to whom such an order has been
40 | entered shall be held thereafter under any provision of any law to be guilty of
41 | perjury, or to be guilty of otherwise giving a false statement or response to any
42 | inquiry made for any purpose, by reason of his failure to recite or acknowledge
43 | any expunged entries concerning apprehension or trial.

1 (a1) Notwithstanding subsection (a) of this section, if a person is charged
2 with multiple offenses and all the charges are dismissed, or findings of not guilty
3 or not responsible are made, then a person may apply to have each of those
4 charges expunged if the offenses occurred within the same 12-month period of
5 time or if the charges are dismissed or findings are made at the same term of court.
6 Unless circumstances otherwise clearly provide, the phrase "term of court" shall
7 mean one week for superior court and one day for district court. There is no
8 requirement that the multiple offenses arise out of the same transaction or
9 occurrence or that the multiple offenses were consolidated for judgment. The court
10 shall hold a hearing on the application. If the court finds (i) that the person had not
11 previously received an expungement under this subsection, or that any previous
12 expungement received under this subsection occurred prior to October 1, 2005 and
13 was for an offense that occurred within the same 12-month period of time, or was
14 dismissed or findings made at the same term of court, as the offenses that are the
15 subject of the current application, (ii) that the person had not previously received
16 an expungement under G.S. 15A-145, 15A-145.1, 15A-145.2, ~~or 15A-145.3, 15A-~~
17 145.3, 15A-145.4, or 15A-145.5, and (iii) that the person had not previously been
18 convicted of any felony under the laws of the United States, this State, or any
19 other state, the court shall order the expunction. No person as to whom such an
20 order has been entered shall be held thereafter under any provision of any law to
21 be guilty of perjury, or to be guilty of otherwise giving a false statement or
22 response to any inquiry made for any purpose, by reason of his failure to recite or
23 acknowledge any expunged entries concerning apprehension or trial.

24 (b) The court may also order that the said entries, including civil
25 revocations of drivers licenses as a result of the underlying charge, shall be
26 expunged from the records of the court, and direct all law-enforcement agencies,
27 the Division of Adult Correction of the Department of Public Safety, the Division
28 of Motor Vehicles, and any other State or local government agencies identified by
29 the petitioner as bearing record of the same to expunge their records of the entries,
30 including civil revocations of drivers licenses as a result of the underlying charge
31 being expunged. This subsection does not apply to civil or criminal charges based
32 upon the civil revocation, or to civil revocations under G.S. 20-16.2. The clerk
33 shall notify State and local agencies of the court's order as provided in G.S.
34 15A-150. The clerk shall forward a certified copy of the order to the Division of
35 Motor Vehicles for the expunction of a civil revocation provided the underlying
36 criminal charge is also expunged. The civil revocation of a drivers license shall not
37 be expunged prior to a final disposition of any pending civil or criminal charge
38 based upon the civil revocation. The costs of expunging the records, as required
39 under G.S. 15A-150, shall not be taxed against the petitioner.

40 (b1) Any person entitled to expungement under this section may also apply
41 to the court for an order expunging DNA records when the person's case has been
42 dismissed by the trial court and the person's DNA record or profile has been
43 included in the State DNA Database and the person's DNA sample is stored in the

1 State DNA Databank. A copy of the application for expungement of the DNA
2 record or DNA sample shall be served on the district attorney for the judicial
3 district in which the felony charges were brought not less than 20 days prior to the
4 date of the hearing on the application. If the application for expungement is
5 granted, a certified copy of the trial court's order dismissing the charges shall be
6 attached to an order of expungement. The order of expungement shall include the
7 name and address of the defendant and the defendant's attorney and shall direct the
8 SBI to send a letter documenting expungement as required by subsection (b2) of
9 this section.

10 (b2) Upon receiving an order of expungement entered pursuant to subsection
11 (b1) of this section, the SBI shall purge the DNA record and all other identifying
12 information from the State DNA Database and the DNA sample stored in the State
13 DNA Databank covered by the order, except that the order shall not apply to other
14 offenses committed by the individual that qualify for inclusion in the State DNA
15 Database and the State DNA Databank. A letter documenting expungement of the
16 DNA record and destruction of the DNA sample shall be sent by the SBI to the
17 defendant and the defendant's attorney at the address specified by the court in the
18 order of expungement.

19 (c) The clerk shall notify State and local agencies of the court's order as
20 provided in G.S. 15A-150."

21 **SECTION 5.** G.S. 15A-151(a) reads as rewritten:

22 "**§ 15A-151. Confidential agency files; exceptions to expunction.**

23 (a) The Administrative Office of the Courts shall maintain a confidential file
24 containing the names of those people for whom it received a notice under G.S. 15A-150.
25 The information contained in the file may be disclosed only as follows:

- 26 (1) To a judge of the General Court of Justice of North Carolina for the
27 purpose of ascertaining whether a person charged with an offense has
28 been previously granted a discharge or an expunction.
- 29 (2) To a person requesting confirmation of the person's own discharge or
30 expunction, as provided in G.S. 15A-152.
- 31 (3) To the General Court of Justice of North Carolina in response to a
32 subpoena or other court order issued pursuant to a civil action under
33 G.S. 15A-152.
- 34 (4) If the criminal record was expunged pursuant to ~~G.S. 15A-145.4,~~
35 G.S. 15A-145.4 or G.S. 15A-145.5, to State and local law enforcement
36 agencies for employment purposes only.
- 37 (5) If the criminal record was expunged pursuant to ~~G.S. 15A-145.4,~~
38 G.S. 15A-145.4 or G.S. 15A-145.5, to the North Carolina Criminal
39 Justice Education and Training Standards Commission for certification
40 purposes only.
- 41 (6) If the criminal record was expunged pursuant to ~~G.S. 15A-145.4,~~
42 G.S. 15A-145.4 or G.S. 15A-145.5, to the North Carolina Sheriffs'
43 Education and Training Standards Commission for certification
44 purposes only."

45 **SECTION 6.** G.S. 17C-13(b) reads as rewritten:

1 | "(b) Notwithstanding ~~G.S. 15A-145.4~~, G.S. 15A-145.4 or G.S. 15A-145.5,
2 the Commission may gain access to a person's felony conviction records, including
3 those maintained by the Administrative Office of the Courts in its confidential
4 files containing the names of persons granted expunctions. The Commission may
5 deny, suspend, or revoke a person's certification based solely on that person's
6 | felony conviction, whether or not that conviction was expunged."

7 | **SECTION 7.** G.S. 17E-12 reads as rewritten:

8 | "(b) Notwithstanding ~~G.S. 15A-145.4~~, G.S. 15A-145.4 or G.S. 15A-145.5,
9 the Commission may gain access to a person's felony conviction records, including
10 those maintained by the Administrative Office of the Courts in its confidential
11 files containing the names of persons granted expunctions. The Commission may
12 deny, suspend, or revoke a person's certification based solely on that person's
13 felony conviction, whether or not that conviction was expunged."

14 | **SECTION 8.** Sections 2, 3, and 4 of this act become effective
15 December 1, 2012, and apply to petitions filed on or after that date, but petitions
16 filed prior to that date are not abated by this act. The remainder of this act
17 becomes effective December 1, 2012.

18



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O. Walker Reagan
Director

TO: Members of the LRC Committee on Criminal Record Expunctions
FROM: Brenda Carter and Susan Sitze, Committee Co-Counsel
RE: Summary of North Carolina Law Concerning the Expunction of Criminal Records

In limited circumstances, North Carolina law permits the expunction of certain offenses from a person's criminal record. Expunction is the process by which a record of criminal conviction is removed by order of the court, and the individual is restored to the status he or she occupied before the arrest or indictment. The terms 'expunction' and 'expungement' are often used interchangeably, and both appear in the statutes. There are several requirements that must be met for expunction and a person may generally be granted only one expungement in his or her lifetime. Provisions for the expunction of criminal records are set out in Article 5, Chapter 15A of the General Statutes. This memorandum contains a brief overview of the circumstances under which expunction is authorized in this State.

Expunction When Charges Dismissed/Not Guilty

- **Charges Dismissed Or Person Found Not Guilty** - G.S. 15A-146 provides for the expunction of records when charges are dismissed or there is a finding of not guilty. A person charged with any crime, whether a misdemeanor or a felony, who is not convicted of that offense, can apply to have the charge expunged. *Persons who have previously received an expungement under this or other specified provisions, or persons who have previously been convicted of a felony would not qualify under this provision.*
- **Charges Dismissed Or Person Found Not Guilty As A Result Of Identity Fraud** - G.S. 15A-147 provides for the expunction of records when a charge is dismissed or there is a finding of not guilty in a case where a person is charged with a crime as a result of someone else using the person's identifying information to commit an infraction or crime. When the charge against the person is dismissed, a finding of not guilty is made, or the conviction is set aside, the person can apply to have the charge expunged. *There is no limit to the number of times a person who is the victim of identity fraud can qualify for an expungement under this provision.*
- **Charges Dismissed Or Person Found Not Guilty Of Certain Drug-Related Offenses Committed While Not Over The Age Of 21** - G.S. 15A-145.2(b) provides for the expunction of records when a person is charged with misdemeanor possession of a controlled substance or possession of less than 1 gram of cocaine*, and the charges are subsequently dismissed or there is a finding of not guilty. *An order of expunction must be entered if the court determines that the person was not over 21 at the time of the offense for which the person was charged.* A similar provision is contained in G.S. 15A-145.3(b) with regard to misdemeanor violations of the Toxic Vapors Act and possession of drug paraphernalia. **Note: Effective 12-1-11 this provision applies to both misdemeanor and felony drug possession.*
- **Pardon of Innocence** – G.S. 15A-149 provides for the expunction of records when a person has been granted a pardon of innocence by the Governor.

Expunction When the Offender Was Under a Specified Age at the Time of the Offense

- **Juvenile Records** - G.S. 7B-3200 provides for a person to petition for the expunction of records relating to the person's having been adjudicated delinquent or undisciplined while a minor. *This provision does not allow the expunction of records relating to an offense that would have been a Class A-E felony if committed by an adult.* The statute also provides for expunction of juvenile records when a juvenile petition was dismissed without adjudication.
- **Convictions of Misdemeanor Committed While under the Age of 18** - G.S. 15A-145 provides for the expunction of records for first offenders convicted of a misdemeanor committed while under the age of 18. *A person who is convicted of a misdemeanor committed prior to reaching the age of 18 may have that conviction expunged after 2 years, provided the person has completed any term of probation and assuming there have been no other convictions within that time period.*
- **Misdemeanor Possession of Alcohol Committed While under the Age of 21** - G.S. 15A-145 also provides for the expunction of records for first offenders convicted of misdemeanor possession of alcohol who were under the age of 21 at the time the offense was committed. *A person who is convicted of misdemeanor possession of alcohol committed while under the age of 21 may have that conviction expunged after 2 years, provided the person has completed any term of probation and assuming there have been no other convictions in that time period.*
- **Misdemeanor Cyberbullying Committed While under the Age of 18** – G.S. 14-458.1(c) provides for the conditional discharge and dismissal of a misdemeanor cyberbullying offense committed while under the age of 18 and provides that expunction may be obtained pursuant to G.S. 15A-146. *(See Charges Dismissed or Person Found Not Guilty above)*
- **Certain Gang Offenses Committed While under the Age of 18** – G.S. 15A-145.1 provides for the expunction of records for first offenders who are either: (i) convicted of, or (ii) discharged and dismissed, for certain gang offenses, when the offense was committed while the offender was under the age of 18. *A person who is convicted of, or discharged and dismissed for, one of these offenses committed while under the age of 18 may have that conviction expunged after 2 years, provided the person has completed any term of probation and assuming there have been no other convictions in that time period.*
- **Nonviolent Felonies Committed While under the Age of 18** – (Effective December 1, 2011) G.S. 15A-145.4 (as enacted in Senate Bill 397, Session Law 2011-278) provides for the expunction of records for first offenders who are convicted of a Class H or Class I felony committed while the offender was under the age of 18. The provision does not apply to any felony that includes assault as an essential element of the offense, or to any offense that requires the person to register as a sex offender or that is otherwise specifically excluded. *A person who is convicted of an eligible felony offense committed while under the age of 18 may have that conviction expunged after 4 years, provided the person has completed any active sentence, period of probation, and post-release supervision, and there have been no other convictions in that time period. A petitioner seeking expunction under this provision must possess a high school diploma, a high school*

Appendix E – Expunction in North Carolina

graduation equivalency certificate, or a GED, and must have completed at least 100 hours of community service since the conviction.

- ***Conditional Discharge and Expunction for First-time Drug Offenders Not Over Age 21*** – G.S. 15A-145.2(a) and G.S. 15A-145.3(a) authorize the expunction of records for offenses discharged and dismissed pursuant to G.S. 90-96(a) or (a1) or G.S. 90-113.14(a) or (a1). These conditional discharges and dismissals are for first offenders who were not over the age of 21 at the time the offense was committed, and who have not previously been convicted of any offense under North Carolina's Controlled Substances Act, Toxic Vapors Act, or Drug Paraphernalia Act, or under corresponding federal law or the laws of another state. When such person pleads guilty to or is found guilty of misdemeanor drug possession, possession of less than one gram of cocaine*, possessing drug paraphernalia, or inhaling or possessing any substance having the property of releasing toxic vapors or fumes, the court may, without entering a judgment of guilt and with the consent of such person, defer further proceedings and place the offender on probation under certain conditions. *Discharge and dismissal under this provision may occur only once with respect to any person. *Note: Effective 12-1-11 this provision applies to both misdemeanor and felony drug possession.*
- ***Cancellation and Expunction for First-time Drug Offenders Not Over Age 21*** – G.S. 15A-145.2(c) and G.S. 15A-145.3(c) apply to first offenders who were not over the age of 21 at the time the offense was committed, and who have not previously been convicted of any offense under North Carolina's Controlled Substances Act, Toxic Vapors Act, or Drug Paraphernalia Act, or under corresponding federal law or the laws of another state. No sooner than 12 months after conviction, the person may apply to the court to have a conviction of misdemeanor drug possession, possession of less than one gram of cocaine*, possessing drug paraphernalia, or inhaling or possessing any substance having the property of releasing toxic vapors or fumes, cancelled and records of that conviction expunged. *Cancellation and expunction under this provision may occur only once with respect to any person. *Note: Effective 12-1-11 this provision applies to both misdemeanor and felony drug possession.*

Expunction of Larceny Conviction after 15 Years Have Elapsed From Date of Conviction

- ***Misdemeanor Larceny*** – G.S. 15A-145(d1) provides for the expunction of a misdemeanor conviction of misdemeanor larceny pursuant to G.S. 14-72(a) if the person has no felony convictions, it has been at least 15 years since the conviction for misdemeanor larceny, and the person has had no felony or misdemeanor convictions during that 15 year period.

EXPUNCTION OF CRIMINAL RECORDS IN NORTH CAROLINA

CITATION	ELIGIBLE OFFENSES	WAITING PERIOD	STIPULATIONS
<p>G.S. 15A-146</p> <p>Charges Dismissed or there is a finding of Not Guilty</p>	<p>Misdemeanor or felony.</p> <p>Infraction under G.S. 18B-302(i) [purchase or possession of malt beverages or unfortified wine, or consumption of any alcoholic beverage, by a person 19 or 20 years old] prior to December 1, 1999.</p>	<p>None</p>	<p>Charges dismissed or finding of not guilty for offense.</p> <p>Not applicable if person has had previous expungement* of any kind or has a felony conviction.</p> <p><i>*Unless the previous expungement was prior to October 1, 2005 and was for an offense that occurred within the same 12-month period or was dismissed in the same term of court as the offense(s) for which the current expungement is sought.</i></p>
<p>G.S. 15A-147</p> <p>Charges Dismissed or there is a finding of Not Guilty, as Result of Identity Theft</p>	<p>Infraction, misdemeanor or felony</p>	<p>None</p>	<p>Charges brought as result of identity theft and charges dismissed, finding of not guilty, or conviction is set aside.</p> <p>No costs taxed against petitioner.</p>
<p>G.S. 15A-145.2(b) G.S. 15A-145.3(b)</p> <p>Charges Dismissed Certain Drug Offenses/Toxic Vapors Act</p>	<p>--Misdemeanor possession of a controlled substance, violation of the toxic vapors act, or possession of drug paraphernalia.</p> <p>--Felony possession of less than 1 gram of cocaine.*</p> <p><i>*Effective 12-1-11, includes felony possession of any controlled substance. (HB 642, Session Law 2011-192)</i></p>	<p>None</p>	<p>Charges dismissed or finding of not guilty.</p> <p>Person must be 21 or under at time of offense.</p>

Appendix E – Expunction in North Carolina

CITATION	ELIGIBLE OFFENSES	WAITING PERIOD	STIPULATIONS
G.S. 15A-149 Pardon of Innocence	Any offense	None	Petitioner has received pardon of innocence from the Governor
G.S. 7B-3200(h) Juvenile Records Alleged Delinquent/Undisciplined	Any allegation of juvenile delinquency. Any allegation of undisciplined juvenile.	Petitioner is 16 years or older. Petitioner is 18 years or older.	Delinquency alleged, but juvenile petition dismissed. Undisciplined alleged, but juvenile petition dismissed.
G.S. 7B-3200(a),(b) Juvenile Records Adjudicated Delinquent/Undisciplined	Any adjudication of undisciplined. Any adjudication of delinquency for a misdemeanor or Class F-I felony.	Petitioner is 18 years or older. For delinquency, at least 18 months after release from juvenile court jurisdiction.	Petitioner has had no subsequent delinquent adjudications or convictions of a misdemeanor or felony as an adult.
G.S. 15A-145 First Offender Under 18 (Age 21 for certain alcohol offenses)	Misdemeanor	Whichever of the following is later: • 2 years after the date of conviction; • Completion of any period of probation,	No other convictions, and Petitioner must have been: • Under 18 at the time of the offense; or • If offense is misdemeanor possession of alcohol in violation of G.S. 18B-302(b)(1), petitioner must have been under 21 at the time of the offense.
G.S. 15A-145.1 and G.S. 14-50.29 Certain Gang Offenses	Class H felony under Street Gang Suppression Act Enhanced offense under G.S. 14-50.22 (enhances any criminal offense by one class if done as part of gang activity)	After discharge and dismissal ; or For convictions, whichever of the following is later: • 2 years after the date of conviction; • Completion of any period of probation.	Petitioner must have been under 18 at the time of the offense. Petitioner has no prior misdemeanor or felony convictions.

Appendix E – Expunction in North Carolina

CITATION	ELIGIBLE OFFENSES	WAITING PERIOD	STIPULATIONS
<p>G.S. 14-458.1(c) Cyberbullying</p>	<p>Cyberbullying by person under the age of 18 years.</p>	<p>Upon discharge and dismissal.</p>	<p>Petitioner must have been under 18 at the time of the offense. Expunction is pursuant to G.S. 15A-146.</p>
<p>G.S. 15A-145.2(a) G.S. 15A-145.3(a) First-time drug offenders (Discharge & Dismissal)</p>	<p>Misdemeanor possession of a controlled substance, violation of the toxic vapors act, or possession of drug paraphernalia. Felony possession of less than 1 gram of cocaine.* <i>*Effective 12-1-11, includes felony possession of any controlled substance (HB 642, Session Law 2011-192)</i></p>	<p>Upon discharge and dismissal under G.S. 90-96(a) or (a1) or G.S. 90-113.14(a) or (a1).</p>	<p>Petitioner must have been under 21 at the time of the offense and must have no prior convictions and no prior discharge and dismissal under this statute.</p>
<p>G.S. 15A-145.2(c) G.S. 15A-145.3(c) First-time drug offenders (Convicted)</p>	<p>Misdemeanor possession of a controlled substance, violation of the toxic vapors act, or possession of drug paraphernalia. Felony possession of less than 1 gram of cocaine* <i>*Effective 12-1-11, includes felony possession of any controlled substance (HB 642, Session Law 2011-192)</i></p>	<p>No sooner than 12 months after conviction.</p>	<p>Petitioner must have been under 21 at the time of the offense and must have no prior convictions and no prior expunctions under this statute.</p>
<p>G.S. 15A-145(d1) Misdemeanor Larceny</p>	<p>Misdemeanor larceny pursuant to G.S. 14-72(a); value of goods \$1,000 or less.</p>	<p>15 years from date of conviction.</p>	<p>Petitioner must have no felony convictions; and no misdemeanor convictions in the 15 years prior to petition for expunction.</p>

Appendix E – Expunction in North Carolina

CITATION	ELIGIBLE OFFENSES	WAITING PERIOD	STIPULATIONS
<p>G.S. 15A-145.4 <i>(as enacted in Senate Bill 397, Session Law 2011-278 and effective December 1, 2011)</i></p> <p>Nonviolent Felony</p>	<p>Class H or Class I felony that does not include assault as an essential element of the offense, does not require the offender to register as a sex offender, or is otherwise specifically excluded.</p>	<p>Four years from date of conviction</p>	<p>Petitioner must have been under 18 at the time of the offense.</p> <p>Petitioner must <i>possess a high school diploma, graduation equivalency certificate, or a GED; and must have completed at least 100 hours of community service since the conviction.</i></p>

Chart Prepared by: *Brenda Carter & Susan Sitze, Staff Attorneys
 Research Division, NC General Assembly*